

# The State of South Carolina



## Office of the Attorney General

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January 11, 1985

Joseph H. Earle, Jr., Esquire  
Greenville County Attorney  
100 Courthouse Annex  
Greenville, South Carolina 29601

Dear Mr. Earle:

By your letter of November 20, 1984, you enclosed an ordinance proposed to be adopted by Greenville County Council concerning the county administrator's role in annual budget proposals. You asked this Office for an opinion as to the legality of the ordinance, your own opinion being that the proposed ordinance may be unlawful in that it may inhibit the county administrator in his preparation of budgets. This Office concurs with your opinion.

Article X, Section 7(b) of the Constitution of the State of South Carolina mandates that a county, as a political subdivision, "prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year. ..." Section 4-9-140, Code of Laws of South Carolina (1983 Cum.Supp.) provides additionally, in part:

County council shall adopt annually and prior to the beginning of the fiscal year operating and capital budgets for the operation of county government and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted. Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements except as provided for by other revenue sources.

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In the preparation of annual budgets or supplemental appropriations, council may require such reports, estimates and statistics from any county agency or department as may be necessary to perform its duties as the responsible fiscal body of the county.

Clearly, the ultimate responsibility for adopting and maintaining the annual budgets and insuring that adequate revenue is generated to meet expenses lies with Greenville County Council.

Greenville County operates under the council-administrator form of government and therefore employs a county administrator pursuant to Section 4-9-620 of the Code. Among the administrator's powers and duties specified in Section 4-9-630 are the duties

(4) to prepare annual operating and capital improvement budgets for submission to the council and in the exercise of these responsibilities he shall be empowered to require such reports, estimates and statistics on an annual or periodic basis as he deems necessary from all county departments and agencies;  
[and]

\* \* \*

(7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council;

\* \* \*

Further duties of the administrator relative to the budgetary process are specified by Section 4-9-640 of the Code:

The county administrator shall prepare the proposed operating and capital budgets and submit them to the council at such time as the council determines. At the time of submitting the proposed budget, the county administrator shall submit to the council a

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statement describing the important features of the proposed budgets including all sources of anticipated revenue of the county government and the amount of tax revenue required to meet the financial requirements of the county.

Thus, the county administrator is the first step in the county's budgetary process, though the council is thereafter free to exercise its discretion in the adoption of the operating and capital budgets.

The proposed ordinance would, in part, amend Section 2-7(b)(1) of the Greenville County Code to read:

The county administrator shall prepare the proposed operating and capital improvement budgets and submit them to the council at such time as the council determines. Operating budgets shall not exceed those adopted for the previous budget year except that in preparing such budgets the county administrator may increase them by a percentage of the previous year's budget which does not exceed expected growth in revenues from all sources as projected by him. As initially presented, the operating budgets shall not include salary raises, whether merit, cost-of-living, or otherwise, for county employeeess [sic]; such raises, if any, shall be left to the judgment of the County Council.

At the time of submitting the proposed budget, the county administrator shall submit to the council a statement describing the important features of the proposed budgets including all sources of anticipated revenues of the county government and the amount of tax revenues required to meet the financial requirements of the county. The county administrator shall affix his certificate stating that, in his opinion, the proposed budget does not exceed anticipated revenues for the period concerned and shall see that there is full compliance with Section 4-9-140 of the 1976 Code of Laws of South Carolina, as amended.

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The proposed amendments are the underlined portions indicated above.

In large part, Section 2-7(b)(1) codifies Section 4-9-640 of the State Code. The underlined portions would thus supplement the state statutes applicable to the budgetary process. Such supplementary ordinances are permissible as long as state law is not contravened or contradicted. 20 C.J.S. Counties § 92. On its face, the proposed amendment does not appear to contradict or contravene state law. From Section 4-9-630, it is readily apparent that the county administrator would only carry out the salary and classification schemes for county personnel as adopted by council; any adjustment to salary schedules would clearly be within the province of council.

As the ordinance might be applied, however, a court faced with the issue could determine that the ordinance prevents or would prevent the county administrator from completely fulfilling his obligations in the initial budgetary process. Thus, a court could find, as you opined, that the ordinance might be invalid as contravening portions of Sections 4-9-630 and -640 of the Code.

Your office has already identified some problems with the proposed amendments. For instance, one problem would be that time spent by the county administrator in budget preparation may have been wasted to some extent if council then requests that he redraft the proposed budget to include salary increases, necessitating adjustments to other proposed portions of the budget. While the county administrator's mandate to prepare the proposed budget may be hampered, it does remain council's exclusive task to adopt the budget in whatever form it deems advisable; the role of the county administrator is to prepare a proposed budget and administer the finally approved budget.

On the other hand, it could be argued that Greenville County Council is attempting to adopt a fiscal policy concerning spending limitations. By Section 4-9-630(2), the county administrator is required "to execute the policies, directives and legislative actions of the council." A court faced with the issue could conceivably decide that council is adopting a fiscal policy by which the county administrator is to be guided in preparing his initial proposed budget and thus that the proposed ordinance would be valid. Since his authority is only one of

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recommending, one could argue that council would have the authority to adopt the ordinance.

While arguments may be made on both sides, your opinion that the proposed ordinance may be unlawful has very strong support when application of the proposed ordinance is considered. Because there is no clear-cut answer, however, a declaratory judgment action might be helpful to completely resolve the question.

Sincerely,

*Patricia D. Petway*  
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Assistant Attorney General

PDP:djg

REVIEWED AND APPROVED BY:

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